

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RONNIE LAMOUNTAIN, a/k/a
Veronica LaMountain,

Petitioner,

v.

9:02-CV-1307
(FJS/DEP)

DANIEL SENKOWSKI, Superintendent
Clinton Correctional Facility,

Respondent.

APPEARANCES

OF COUNSEL

RONNIE LAMOUNTAIN
a/k/a Veronica LaMountain
96-A-0353
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Petitioner *pro se*

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Attorneys for Respondent

MICHAEL G. MCCARTIN, AAG

SCULLIN, Senior Judge

ORDER

Petitioner Ronnie LaMountain filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 with the Court on October 15, 2002. *See* Dkt. No. 1. On September 7, 2004, Magistrate Judge Peebles issued a Report and Recommendation, in which he recommended that this Court deny the petition. *See* Dkt. No. 19. This Court adopted the Report and

Recommendation and dismissed this action in an Order filed November 29, 2004. *See* Dkt. No. 22. Petitioner appealed from that Order.¹ *See* Dkt. No. 27.

The Court notes that Petitioner has **not** filed a request for a Certificate of Appealability as 28 U.S.C. § 2253(c)(1) requires. The Second Circuit, however, has held that a court may construe a Notice of Appeal as a Certificate of Appealability. *See Marmolejo v. United States*, 196 F.3d 377, 378 (2d Cir. 1999) (citing *Hooper v. United States*, 112 F.3d 83, 88 (2d Cir. 1997)); *Forbes v. United States*, No. 98 Civ. 1878, 1999 WL 1133362, *1 (S.D.N.Y. December 10, 1999) (holding that court properly construed a notice of appeal as a certificate of appealability and properly ruled on that request). This Court, therefore, will construe Petitioner's Notice of Appeal as a request for a Certificate of Appealability.

Section 2253(c)(1) of Title 28 of the United Stats Code provides, in pertinent part, that,

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).

Moreover, a court may issue a Certificate of Appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

After reviewing the relevant parts of the file in this action, and for the reasons set forth in Magistrate Judge Peebles' September 7, 2004 Report and Recommendation and in this Court's

¹ Petitioner did not file his Notice of Appeal in this Court until September 21, 2006. *See* Dkt. Nos. 24-27.

November 29, 2004 Order, the Court finds that Petitioner has failed to make such a showing in this case. Accordingly, for the above-stated reasons, the Court hereby

ORDERS that, having construed Petitioner's Notice of Appeal as a request for a Certificate of Appealability, that request is **DENIED**; and the Court further
ORDERS that the Clerk of the Court shall serve a copy of this Order upon Petitioner and Respondent's counsel in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: July 9, 2007
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge